

§ 58-49-40. Qualifications for licensure.

(a) To meet the requirements for issuance of a license and to maintain a MEWA, a MEWA must be:

- (1) Nonprofit;
- (2) Established by a trade association, industry association, or professional association of employers or professionals that has a constitution or bylaws and that has been organized and maintained in good faith for a continuous period of five years for purposes other than that of obtaining or providing insurance;
- (3) Operated pursuant to a trust agreement by a board of trustees that has complete fiscal control over the MEWA and that is responsible for all operations of the MEWA. Except as provided in this subdivision, the trustees must be owners, partners, officers, directors, or employees of one or more employers in the MEWA. With the Commissioner's approval, a person who is not such an owner, partner, officer, director, or employee may serve as a trustee if that person possesses the expertise required for such service. A trustee may not be an owner, officer or employee of the administrator or service company of the MEWA. The trustees have the authority to approve applications of association members for participation in the MEWA and to contract with an authorized administrator or service company to administer the operations of the MEWA;
- (4) Neither offered nor advertised to the public generally; and
- (5) Operated in accordance with sound actuarial principles.

(b) The MEWA shall issue to each covered employee a policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided. The evidence of benefits and coverages provided shall contain, in boldface print in a conspicuous location, the following statement: "THE BENEFITS AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH A TRUST FUND ESTABLISHED BY A GROUP OF EMPLOYERS [name of MEWA]. EXCESS INSURANCE IS PROVIDED BY A LICENSED INSURANCE COMPANY TO COVER HIGH AMOUNT MEDICAL CLAIMS. THE TRUST FUND IS NOT SUBJECT TO ANY INSURANCE GUARANTY ASSOCIATION, ALTHOUGH THE TRUST FUND IS MONITORED BY THE NORTH CAROLINA DEPARTMENT OF INSURANCE. OTHER RELATED FINANCIAL INFORMATION IS AVAILABLE FROM YOUR EMPLOYER OR FROM THE [name of MEWA]." If applicable, the same documents shall contain, in boldface print in a conspicuous location, the following statement: "PARTICIPATING EMPLOYERS WILL BE RESPONSIBLE FOR FUNDING ALL CLAIMS INCURRED BY EMPLOYEES COVERED UNDER THE TRUST." Any statement required by this subsection is not required on identification cards issued to covered employees or other insureds.

(c) Each MEWA shall maintain excess insurance written by an insurer authorized to do business in this State with a retention level determined in accordance with sound actuarial principles. Such contracts must be filed with the Commissioner and contain notification provisions requiring at least 60 days' notice to the Commissioner from the insurer issuing such coverage prior to the termination or modification of such coverage. The Commissioner may by rule prescribe net retentions levels for MEWAs in accordance with the number of risks insured.

(d) Each MEWA shall establish and maintain appropriate loss reserves determined in accordance with sound actuarial principles.

(e) The Commissioner shall not grant or continue a license to any MEWA if the Commissioner deems that any trustee, manager, or administrator is incompetent, untrustworthy,

or so lacking in insurance expertise as to make the operations of the MEWA hazardous to the potential and existing insureds; that any trustee, manager, or administrator has been found guilty of or has pled guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of one year or more under the law of any state or country, whether or not a judgment or conviction has been entered; that any trustee, manager, or administrator has had any type of insurance license revoked in this or any other state; or that the business operations of the MEWA are or have been characterized, to the detriment of the employers participating in the MEWA, of persons receiving benefits from the MEWA, or of creditors or the public, by the improper manipulation of assets, accounts, or excess insurance or by bad faith.

(f) To qualify for and retain a license, a MEWA shall file all contracts with administrators or service companies with the Commissioner, and report any changes to such contracts to the Commissioner in advance of their implementation.

(g) Failure to maintain compliance with the eligibility requirements established by this section is a ground for denial, suspension, or revocation of the license of a MEWA. (1991, c. 611, s. 1.)